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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/761,153	01/17/2001	David Swisa	00/21263	3699

7590

03/08/2005

G. E. EHRLICH (1995) LTD.  
c/o ANTHONY CASTORINA  
SUITE 207  
2001 JEFFERSON DAVIS HIGHWAY  
ARLINGTON, VA 22202

EXAMINER

MENDOZA, MICHAEL G

ART UNIT

PAPER NUMBER

3731

DATE MAILED: 03/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.	Applicant(s)	
09/761,153	SWISA, DAVID	
Examiner	Art Unit	
Michael G. Mendoza	3731	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 14 December 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-3 and 5-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 5-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments filed 14 December 2005 have been fully considered but they are not persuasive. The Applicant argues that the piston 24 is not anchored. The Examiner disagrees. The piston 24 attached to a spring 23. Spring 23 is attached to the device. Therefore the piston 24 is anchored to the device, because it is fixed to the device via spring 23.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

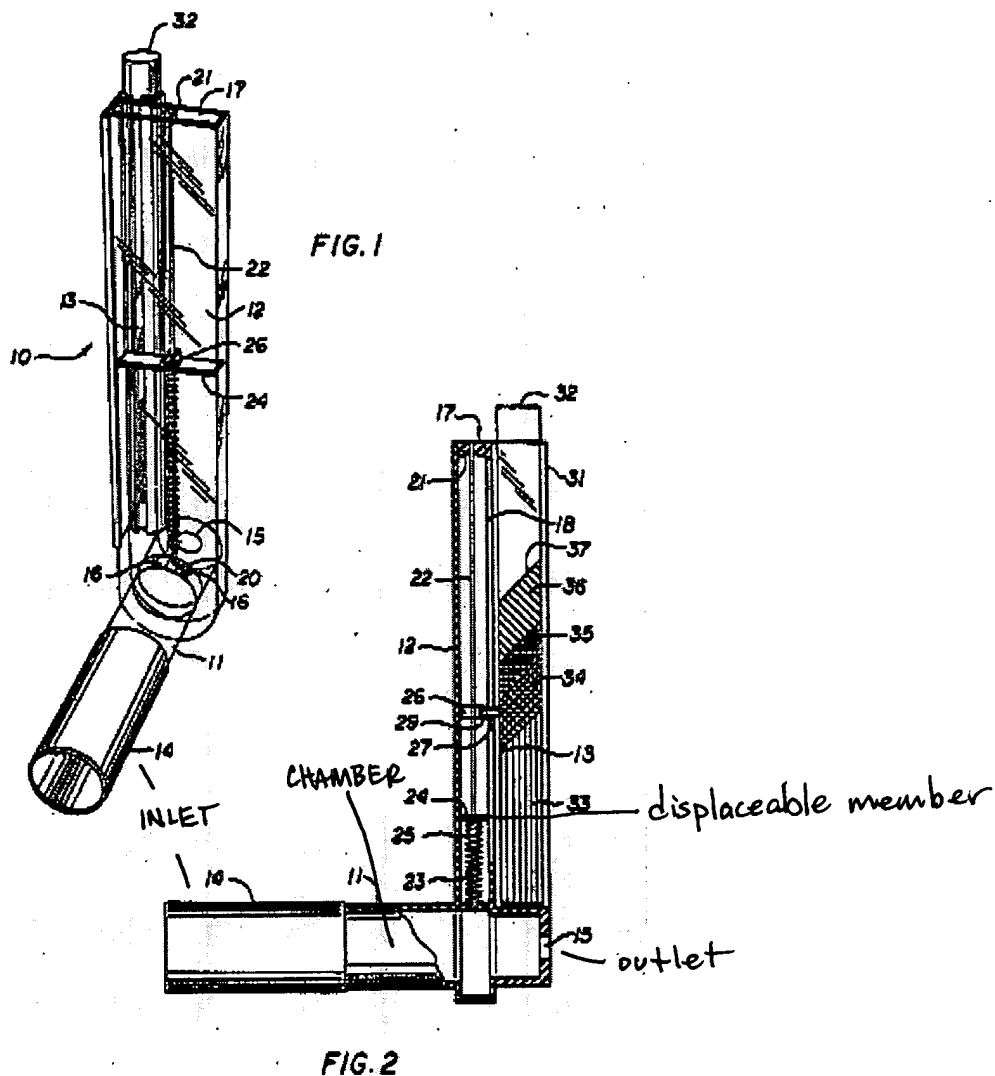
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 5, and 13-15 are rejected under 35 U.S.C. 102(b) as being anticipated by O'Brien 5320107.

4. O'Brien teaches a device for detecting the flow of gas through at least one opening in an object, the device comprising: an inlet; a chamber having an interior; an outlet open to ambient pressure and configured so as to restrict flow to a greater degree than the inlet; a pressure displaceable member having an inner face exposed to and contiguous with the interior of the chamber and an outer face exposed to the ambient pressure, and further being anchored at an anchoring location with respect to the interior; the member is displaceable as a result of a differential in respective pressures of the chamber interior and the ambient pressure; and wherein the outlet is configured

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so as to restrict flow therethrough to a greater degree than the flow is restricted by the inlet.



### Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 2 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over O'Brien in view of Hamilton 5520167.

7. As to claim 2, O'Brien teaches the device of claim 1. O'Brien fails to teach an attaching member.

8. Hamilton teaches a device with a common attaching member 10 for allowing the attachment of different masks. Therefore it would have been obvious to one of ordinary skill in the art to use the attachment member of Hamilton to attach different size masks to allow for use with a child or an adult (col. 1, lines 52-53).

9. Claims 6-8 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over O'Brien.

10. As to claim 6, O'Brien teaches the device of claim 1. O'Brien fails to specifically teach wherein the pressure displaceable member is removably coupled to a visual indicator of displacement of the pressure displaceable member or a casing removably attached to the device. However it would have been obvious to one of ordinary skill in the art to make the pressure displaceable member or the casing removable for maintenance such as cleaning or repair.

11. As to claims 7 and 8, O'Brien teaches the device of claim 6 wherein the visual indicator comprises a movable element and a graduated scale 30 for indicating an extent of the movement thereof; and wherein the movable element is tensionably connected to the pressure displaceable member, such as to have a normal position at

zero tension and wherein increasing displacement causes increasing tension against the displacement (col. 3, lines 12-27).

12. Claims 9-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over O'Brien in view of Aylsworth et al. 5911219.

13. O'Brien teaches the device of claim 1. O'Brien fails to teach where the pressure displaceable member is operatively associated with a sensor.

14. Aylsworth et al. teaches a device with a common sensor for communicating with the user or care giver (col. 2, lines 36-37). Therefore it would have been obvious to one of ordinary skill in the art to modify the device of O'Brien to include the sensor of Aylsworth et al. to measure flow and store data associated with the sensor (col. 3, lines 18-33).

15. O'Brien/Aylsworth teaches the device of claim 9, wherein the indication is any one of a group comprising visible, audible and tactile indications (col. 7, lines 11-13); and wherein the indication is transmittable to a remote receptor (col. 7, lines 38-44).

### ***Conclusion***

16. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

**Contacts**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael G. Mendoza whose telephone number is (571) 272-4698. The examiner can normally be reached on Mon.-Fri. 8:00 a.m. - 5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn Dawson can be reached on (571) 272-4694. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



MM

  
GLENN K. DAWSON  
PRIMARY EXAMINER